



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: KCA Corporation; Triple P Services, Inc.

File: B-250465.2; B-250465.3; B-250783

Date: January 7, 1993

Christopher Solop, Esq., Ott, Purdy & Scott, for KCA Corporation; and F.D. Bowden for Triple P Services, Inc., the protesters.

David R. Kohler, Esq., and Amy M. Mertz, Esq., Small Business Administration, for the agency.

Gregory H. Petkoff, Esq., Department of the Air Force, for the agency.

Stephen J. Gary, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where Administrator of the Small Business Administration (SBA) has appealed withdrawal of 8(a) set-aside to the head of the contracting agency pursuant to Federal Acquisition Regulation (FAR) § 19.810, and that appeal is still pending, General Accounting Office will not consider protest on same grounds.

DECISION

KCA Corporation and Triple P Services, Inc. protest the Department of the Air Force's decision to cancel request for proposals (RFP) No. F22600-92-R-0049, in order to conduct the procurement on an unrestricted basis to permit participation by the Mississippi state agency for the blind, pursuant to the Randolph-Sheppard Act, 20 U.S.C. § 107 (1988). The protesters argue that, once committed to the 8(a) program, the procurement could not properly be withdrawn, and that the Randolph-Sheppard Act is not applicable to this procurement.

In November 1991, the Air Force offered to SBA for the 8(a) program its full food service requirement for five dining halls, a central food preparation facility, and a central baking facility, at Keesler Air Force Base, Mississippi. The Air Force requested that the requirement be competed among eligible 8(a) firms within SBA's Region IV, as it had since January 1988. SBA accepted the requirement the same month and identified 11 eligible offerors, including KCA and Triple P. In July 1992, the Air Force issued RFP No. F22600-92-R-0049, which restricted competition for the

requirement to 8(a) program participants. Proposals were submitted by such 8(a) firms, including KCA and Triple P, by the August 10 closing date; on September 11, however, the Air Force issued an amendment canceling the RFP in order to issue a solicitation on an unrestricted basis, to comply with the Randolph-Sheppard Act.¹ The protests of KCA and Triple P followed.

The protesters argue that, once the Air Force had committed the procurement to the 8(a) program and received proposals from eligible participants, it was precluded from canceling the solicitation and withdrawing the procurement from the 8(a) program. Additionally, they maintain that the Randolph-Sheppard Act does not apply to this procurement, since the statute and the implementing regulations of the Department of Education at 34 C.F.R. § 395 (1992) contemplate operation of a conventional cafeteria, not military dining facilities. Consequently, according to the protesters, the Air Force lacked a proper basis for removing the procurement from the 8(a) program and conducting it instead on an unrestricted basis.

We will not consider the protests. The Small Business Act, 15 U.S.C. § 637(a)(1)(A) (1988), and implementing regulations, provide that where the SBA and the contracting officer fail to agree on a decision not to make a particular acquisition available for award under the 8(a) program, the SBA Administrator may appeal the decision to the head of the contracting agency. See Federal Acquisition Regulation (FAR) § 19.810; 13 C.F.R. § 124.320(b) (SBA regulations). The record shows that, pursuant to those provisions, the SBA Administrator formally appealed the Air Force's withdrawal of the procurement from the 8(a) program in order to permit competition under the Randolph-Sheppard Act. That appeal, filed October 13 with the Secretary of the Air Force, raises essentially the same issues discussed above.

¹The Randolph-Sheppard Act gives priority rights to licensed blind persons to operate vending facilities, including cafeterias, on federal property. The implementing regulations of the Department of Education provide that federal agencies requiring cafeteria services must invite state agencies which license blind vendors for participation under the statute to respond to a solicitation for such services. 34 C.F.R. § 395. In this case, the Air Force determined that the Mississippi state agency for the blind was not an eligible 8(a) program participant, and that the state agency could therefore participate only in an unrestricted procurement.

Since the Small Business Act expressly provides for resolution of disagreements between the SBA and the contracting officer concerning the 8(a) program by the head of the procuring agency, and an SBA appeal of the Air Force's decision is still pending, our Office will not consider the protests. Ameritex Enters. Ltd., 63 Comp. Gen. 22 (1983), 83-2 CPD ¶ 461 (applying similar provisions of Small Business Act and Defense Acquisition Regulation § 1-705.5, DAC No. 76-19, July 27, 1979); see also Executive Resource Assocs., Inc., B-228092, Nov. 10, 1987, 87-2 CPD ¶ 473 (GAO will not review disagreements concerning 8(a) contracts between SBA and contracting officer which Small Business Act mandates be submitted for determination to head of contracting agency).

The protests are dismissed.



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